

REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 49-51, 59, 62, 68-70, 73, 78, 84, 86-89, 92 and 97-108 are pending in the application. Claims 59, 62, 68-70, 73 and 78 are allowed. Claims 49, 85-87, 89, 97 and 102-105 are rejected. Claims 51, 84, 88, 92, 98, 101 and 106-108 are objected to.

Claims 49, 103, 107 and 108 have now been amended. Claims 61, 62 and 104-106 have now been cancelled.

Allowable Subject Matter

The Examiner objected to claims 51, 84, 88, 92, 98-101 and 106-108 as being dependent upon a rejected base claim, but would allow these claims if rewritten in independent form.

In the interest of expediting prosecution of this case, Applicant has elected to rewrite objected claims into an allowable form.

The limitations of now cancelled claim 51 have been incorporated into claim 49 rendering this claim and claim 50 which depends directly therefrom allowable.

Likewise, the limitations of now cancelled claim 106 have been incorporated into claim 103 rendering this claim allowable. Claims 107-108 have been amended to depend directly from now amended claim 103, rendering these claims allowable.

Applicant would like to point out that claim 84 is an independent claim and as such should not have been objected to. Applicant believes that the prior art of record does not describe or suggest a valve which "opens responsive to a pressure level of an exacerbated state of heart failure but not under normal pressures of systole and diastole of a normal heart" nor would the technology described by the prior art benefit from such a valve since it depends on enabling shunt flow during a normal heart cycle. As such, this claim is neither anticipated nor rendered obvious by the teachings of the prior art. It will be appreciated that since claims 88, 92 and 98-101 depend from claim 84, that such claims should also be deemed allowable.

Claim Rejections - 35 USC § 102

The Examiner has rejected claims 49-50, 86-89, 97, 102-103 and 105 under 35 USC 102(e) as being anticipated by Wolf et al.

Claim 105 has now been cancelled. Claims 49 and 103 have now been amended to include limitations of dependent claims which were objected to by the Examiner, rendering these claims and their dependents allowable.

As is argued above, independent claim 84 (which was objected to by the Examiner) is neither anticipated nor rendered obvious by the prior art of record and thus claim 84 and its dependents should be allowed.

Claim Rejections - 35 USC § 103

The Examiner has rejected claim 104 under 35 U.S.C. 103(a) as being unpatentable over Wolf et al. in view of Wilk.

Claim 104 has now been cancelled rendering moot rejections with respect to this claim.

In view of the above amendments and remarks it is respectfully submitted that claims 49, 50, 59, 68-70, 73, 78, 84, 86-89, 92 and 97-103 and 107-108 are now in condition for allowance. A prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,

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